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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ALIGN TECHNOLOGY, INC.,

Plaintiff,

vs.

ORTHOCLEAR, INC. and  
ORTHOCLEAR HOLDINGS, INC.,

Defendants.

CASE NO. CV-05-2948 MMC (JCS)

**[PROPOSED] STIPULATION AND  
ORDER REGARDING PLAINTIFF'S  
OUTSTANDING DISCOVERY MOTIONS;  
AND DEFENDANTS' MOTION TO  
COMPEL FURTHER RESPONSES TO  
REQUESTS FOR PRODUCTION AND  
INTERROGATORIES AND DEPOSITION  
NOTICES**

1           Whereas, on May 9, 2006, Plaintiff Align Technology, Inc. ("Align") filed a  
2   Motion to Compel Depositions of William Britt and Alice Ruutel, and on May 9, 2006 Align filed  
3   Motion to Compel Depositions Of Defendants' Persons Most Knowledgeable; and

4           Whereas, on May 5, 2006, OrthoClear, Inc. ("OrthoClear") and OrthoClear  
5   Holdings, Inc. ("Holdings") (collectively, "Defendants") filed a Motion to Compel Further  
6   Responses to Requests for Production and Interrogatories and Deposition Notices; and

7           Whereas, the Parties have extensively met and conferred to resolve their  
8   disagreements without intervention by the Court and have reached agreements on all of those  
9   disagreements.  
10

11           Therefore, it is hereby ordered that:

12           1.     OrthoClear agrees to produce Bill Britt and Alice Ruutel (on dates to be  
13   determined by the Parties) for deposition before July 1, 2006. OrthoClear further agrees to  
14   produce witness(es) for deposition before July 1 as the person most knowledgeable on the  
15   remaining topics of Align's February 17, 2006 and March 3, 2006 Notices of Taking Deposition  
16   of Persons Most Knowledgeable for Defendant OrthoClear, Inc., except for topics 13-17 of  
17   Align's February 17, 2006 Notice of Taking Deposition of Persons Most Knowledgeable for  
18   Defendant OrthoClear, Inc.

19           2.     On or before June 16, 2006, Align will supplement its response to Nos. 1-8  
20   of OrthoClear's First Set of Interrogatories ("OrthoClear's Interrogatories") and Nos. 1-6 of  
21   Holdings' First Set of Interrogatories ("Holdings' Interrogatories").

22           3.     On or before June 16, 2006, Align will supplement its response to  
23   OrthoClear's Interrogatories Nos. 20 and 21 and Holdings' Interrogatories No. 10.

24           4.     On or before June 16, 2006, Align will supplement its response to  
25   OrthoClear's Interrogatories No. 15. Align represents that it will not supplement its responses to  
26   OrthoClear's Interrogatories Nos. 14 and Holdings' Interrogatories No. 8 because all other  
27   responsive information is protected under the attorney-client privilege or the work-product  
28

1 doctrine.

2 5. On or before June 16, 2006, Align will supplement its responses to:

3 a. OrthoClear's Interrogatories No. 9 and OrthoClear's First Set of  
4 Request for Production of Documents ("OrthoClear's RFPDs") No.  
5 99 by producing all press statements, marketing, and webpages  
6 referring to certification or training.

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8 b. OrthoClear's Interrogatories No. 10 and OrthoClear's RFPDs No. 7  
9 by producing a list of all doctors revealed by diligent search and  
10 reasonable inquiry who were certified one-on-one, or in a doctor's  
11 office, restaurant, or bar.

12 c. OrthoClear's Interrogatories Nos. 16 and 17 and OrthoClear's  
13 RFPDs No. 17 by producing a list of all doctors revealed by  
14 diligent search and reasonable inquiry who have been decertified by  
15 Align.

16 d. Holdings Interrogatories Nos. 15-18 and 20 and OrthoClear's  
17 RFPDs No. 145 by describing the policy for whether a doctor is  
18 listed on Align's "Find a Doctor" webpage.

19 6. On or before June 16, 2006, Align will supplement its response to  
20 OrthoClear's Interrogatories Nos. 11 and 12 and OrthoClear's RFPDs No. 64 by listing the Bates  
21 numbers of previously produced documents that define when and how "The Clear Way To  
22 Straighten Teeth" was used.

23 7. On or before June 16, 2006, Align will supplement its response to  
24 OrthoClear's Interrogatories No. 22.

25 8. On or before June 16, 2006, Align will identify the number of doctors who  
26 have agreed to exclusivity contracts including but not limited to the Welcome Back program, as  
27 well as the number of cases submitted under exclusivity contracts including but not limited to the  
28

1 Welcome Back program.

2 9. On or before June 30, 2006, Align will supplement its responses to  
3 OrthoClear's RFPDs Nos. 130 and 131 by producing all communications with doctors and  
4 patients that are revealed by a reasonably diligent search that (1) refer to "The Clear Way To  
5 Straighten Teeth," (2) relate or refer to evidence of confusion, and (3) contain the following  
6 words (and their plurals): "train," "training," "trained," "certifies," "certify," "certified,"  
7 "certification," "educating," "education," and "educate."

8 10. On or before June 16, 2006, Align will produce a list of every doctor  
9 revealed by diligent search and reasonable inquiry that has been certified by Align. Also by June  
10 16, 2006, Defendants will identify the Bates numbers of previously produced documents that lists  
11 doctors certified by OrthoClear and the dates of those lists.

12 11. On or before June 16, 2006, Align will produce all surveys and market  
13 research regarding "The Clear Way To Straighten Teeth."

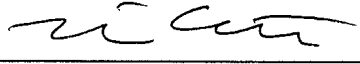
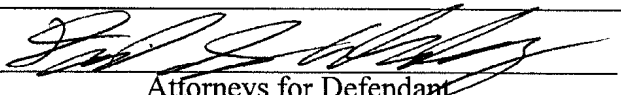

14 12. On or before June 23, 2006, Align will produce a complete set of Align's  
15 Quarterly Sales Reference Guides, redacting those portions that do not relate or refer to  
16 certification, training, sample advertisements, or "The Clear Way To Straighten Teeth."

17 13. The Court, in light of Align's agreement to provide supplemental responses  
18 to Nos. 1-8 of OrthoClear's Interrogatories and Nos. 1-6 of Holdings' Interrogatories (*see supra* ¶  
19 2), will defer ruling on Defendants' motion to compel Align to designate additional witnesses on  
20 Topic Nos. 9, 11, and 12 (of Ex. Y to the David S. Almeling Declaration ISO Defendants' Motion  
21 to Compel Further Responses to Requests for Production and Interrogatories and Deposition  
22 Notices ("Almeling Decl.)) and Topic Nos. 6-10 and 12-15 (of Ex. Z to the Almeling Decl.). If  
23 Defendants are not satisfied with Align's supplemental responses to those interrogatories and the  
24 Parties cannot resolve their disagreement, the Parties agree to submit a joint statement to the  
25 Court by no later than June 23, 2006 to resolve the disagreement.  
26  
27  
28

1                   14. Align agrees to produce Lou Shuman (on a date to be determined by the  
2 Parties) for deposition before July 1, 2006.

3                   15. With the exception of the issues discussed in paragraph 13, the Parties  
4 motions are deemed withdrawn.

5  
6  
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 9 DATED: <u>6/9/06</u>	<u></u> Attorneys for Plaintiff
10 11 DATED: <u>6/9/06</u>	<u></u> Attorneys for Defendant
12 13 PURSUANT TO STIPULATION, IT IS SO ORDERED.	
14 15 DATED: <u>June 9, 2006</u>	<u></u> Hon. <u>United States</u> Judge Joseph C. Spero

